

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the Family
Child Care License of Sara Wevley

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for Hearing before Administrative Law Judge Steve M. Mihalchick on April 16, 2004, at the Grant County Courthouse, 18 East Division Street, Elbow Lake, MN. The hearing record closed at the conclusion of the hearing.

Justin R. Anderson, Assistant Grant County Attorney, P.O. Box 1014, Elbow Lake, MN 56531-1014, appeared for Grant County Social Services (GCSS) and the Minnesota Department of Human Services (Department).

Jennifer B. Klecker, Attorney at Law, 1118 Broadway, Alexandria, MN 56308, appeared for Sara Wevley (Licensee).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Should the temporary immediate suspension of Sara Wevley's family child care license remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in her care?

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee is a resident of Grant County, licensed as a Family Child Care Provider for 17 years. She provides child care out of her home in Hoffman, MN. Licensee's family consists of her husband and five children.

2. Licensee cares for seven children ranging in age from eight months to five years old. At the insistence of some of the parents, Licensee has her older children, ages 4 and 5, play outside after lunch each day that the weather permits.^[1] Licensee's yard is not fenced. When the older children are outside, Licensee, or her 20-year-old daughter Brittany, observes them through the many windows at the front and back of the house.

3. The western border of Licensee's backyard is a semi-shallow ditch and beyond the property line, further west, is a large open space. A fenced-in softball field and an open football field occupy this open space. On the other side of the two fields, adjacent to the softball field, are a school playground and a school.^[2] The distance between Licensee's home and the school is approximately 800-1000 feet. Highway 27 runs east and west about 500-700 feet north of Licensee's property. The school and the softball field are also both over 400 feet south of the highway. The speed limit on Highway 27 is 30 miles per hour as it runs through the town of Hoffman.

4. On February 12, 2004, at approximately 1:00 p.m., Licensee dressed two of the older children, ages 4 and 5, and sent them to play outside in the snow.^[3] Licensee and her daughter Brittany remained inside and took turns checking on the two children through the windows. Licensee began to put some of the younger children^[4] down for a nap on the main floor shortly after 1:00 p.m.^[5] At about 1:15 p.m., Licensee went downstairs to put at least one child to bed in the lower level. When Licensee got downstairs, she discovered that a light fixture had broken in a small hallway outside the bathroom. Glass was shattered and had scattered all over the floor. Licensee immediately put the child that was in her arms into a playpen so that the child would not be injured and began cleaning up the mess. At about 1:20 p.m., she called Brittany to come help her with the glass and Brittany came downstairs immediately. After about

ten minutes, Licensee went back upstairs to check on the older children playing outside. She could not see them out the window, so she retrieved her shoes and coat from the lower level and went into the yard to look for them. Licensee searched the yard until approximately 1:40 p.m. before going back inside to call the missing children's parents. Licensee reached Pam Randt, one of the child's mothers, and told her to come immediately and to look for the children on her way over. Licensee then left a message for the other child's father at work when she couldn't reach him. Licensee next called 911 to report the missing children.

5. Meanwhile, Ms. Randt, who works at the local telephone company on Highway 27, approximately five blocks from Licensee's home, had someone call 911 to report the missing children as she began driving to Licensee's home. On the way there, she found the children walking along Highway 27.^[6] She drove the children to Licensee's home while they explained that they had walked out of Licensee's yard, over the football field and to the playground to play. When one of them had to go to the bathroom, the children attempted to get into the school, which was locked. As a result, they decided to walk up and around the west side of the school, cross Highway 27 and start back in an easterly direction to find one of the children's homes. In total, the children walked approximately 2400 feet.^[7]

6. While Licensee was on the phone line making the 911 call, at 1:53 p.m., Ms. Randt walked in with the children.^[8] Licensee hung up the phone without giving any information to the dispatcher. Shortly thereafter, the dispatcher called Licensee back to make certain the situation was under control.^[9]

7. The following day, Police Deputy Troy Langlie made a call to GCSS. Director Joyce Pesch noted that the two children had been missing from Licensee's daycare but were found within a short time. The Deputy also informed her that the police station had received a call from a concerned individual about the length of time, 20-30 minutes, the children had been gone before Licensee noticed their absence. Ms. Pesch decided that since it was a Friday afternoon and the children had been found the day before in a timely fashion, that she would not involve Grant County Child Protection until the following week.

8. On February 17, 2004,^[10] Ms. Pesch referred the matter to Rodney Moe at Child Protection. Mr. Moe determined that Licensee was not providing adequate supervision of the children in her care, but that child protection services were not needed. Mr. Moe entered that determination in the "Notes" part of the computerized social services information system, but did not put his decision in writing or inform Licensee of his determination. He simply referred the matter to Christine Monk at GCSS to deal with the licensing implications.^[11]

9. That same day, Ms. Monk called the Department and talked with Dennis Curran about an appropriate way to handle the situation.^[12] She informed Mr. Curran of a previous violation in August, 2000, in which Licensee had been using one of her teenage daughters to baby-sit daycare children prior to the opening of the daycare in the morning.^[13] GCSS had issued Licensee a Correction Order on that occasion, but

both Mr. Curran and Ms. Monk agreed that the current situation warranted a more severe sanction.

10. Over the next couple of days, Ms. Monk completed the Licensing Intake Complaint Form about the matter, in which she explained the nature of the complaint, identified Pam Randt and Paul Nelson as others who may have additional information, and classified the violation under Minn. R. 9502.0315, subp. 29a.^[14] Ms. Monk noted in her Investigative Findings that she had spoken to Pam Randt and Licensee regarding the incident. Ms. Randt had described the athletic fields as approximately 400 yards away from Licensee's home and covered with about six inches of trampled snow. She explained what the children had told her after she found them on Highway 27. Ms. Monk also described her conversation with Licensee on February 19, 2004, stating that Licensee agreed the children were gone approximately 10 minutes before she noticed their absence. Ms. Monk concluded that the children were gone about 45 minutes before being found. Also on that day, Licensee and Ms. Monk reviewed the rules regarding supervision of children of varying ages, and Ms. Monk indicated that she would be recommending that Licensee's license be made conditional.^[15]

11. By letter dated February 26, 2004, Ms. Monk recommended to the Department that the license be made conditional for a period of six months with probationary terms requiring Licensee to have no further violations of the rules and to attend training within the next six months regarding child safety/injury prevention.^[16] Ms. Monk also notified each of Licensee's daycare families, by letters dated February 26, 2004, about the recommendation to the Department.^[17]

12. Licensee explained the February 12, 2004 incident in her own words in a letter to Ms. Monk dated February 27, 2004.^[18] Licensee informed Ms. Monk that she notified her daycare parents and implemented a new policy that no children would be able to play outdoors unless they were directly supervised by an adult the entire time.

13. On March 1, 2004, the Department called Ms. Monk to disagree with GCSS's recommendation for a conditional license.^[19] The Department indicated that a fine or immediate suspension of the license would be more appropriate. The following day, the Department requested that Ms. Monk provide them with Licensee's letter dated February 27, 2004, and Mr. Moe's child protection determination.^[20] Ms. Monk spoke to Mr. Moe and asked him to put his neglect determination in writing. Also on March 2, 2004, Ms. Monk explained to Molly Kelly at the Department that Licensee's February 27, 2004, letter was inconsistent with other information Ms. Monk had gathered about the events of February 12, 2004.^[21] Ms. Kelly told Ms. Monk to speak with her direct supervisor and Grant County Attorney Lyndon Kratochwill, to re-evaluate Licensee's sanction. Mr. Kratochwill agreed with the Department's assessment of the severity of the incident and also recommended an immediate suspension, based upon the admitted facts, the number of blocks that the two children traveled from Licensee's home, and that fact that the children crossed Highway 27. Ms. Monk then prepared a revised recommendation to the Department regarding the license.^[22]

14. Also on March 2, 2004, Licensee returned a call from Ms. Monk and explained the incident in more detail, including how the light fixture in the basement had broken, that glass was everywhere, and that she called Brittany to help clean up due to the emergency-nature of the situation.^[23]

15. On March 3, 2004, Molly Kelly requested a map of the area where the missing children went and were found.^[24] The Department was highly concerned about the distance that the two children had traveled. That same day Ms. Kelly spoke to Ms. Monk and said that the Department was going forward with the immediate suspension. Later that day, Ms. Monk attempted to personally serve Licensee with the Order of Temporary Immediate Suspension at her home, but Licensee was not there.^[25]

16. On March 8, 2004, Ms. Monk did personally serve Licensee with the Order of Temporary Immediate Suspension, issued under Minn. Stat. § 245A.07.^[26] The Order cited as grounds for the immediate suspension Minn. R. parts 9502.0315, subp. 29a (Supervision) and 9502.0365, subp. 5 (Supervision and use of substitutes), and informed her of her right to appeal the Order and her right to a contested case hearing. The letter stated that Licensee was prohibited from operating as a legally unlicensed child care provider unless and until such time as the Order was reversed upon appeal.

17. Licensee appealed the temporary immediate suspension of the license. The Department issued a Notice of and Order for Hearing on March 8, 2004, setting the hearing to take place on March 26, 2004. The hearing date was subsequently changed to April 16, 2004.

18. Rodney Moe prepared a Workgroup Detail on or about March 10, 2004.^[27] The report identified Licensee as its subject and provided the names of the collateral contacts, Chief Deputy Langlie, Deputy Christopherson and Pam Randt. It contained no details about Mr. Moe's child protection investigation, only the final outcome. Mr. Moe still did not issue a formal maltreatment determination letter to Licensee.

19. When Licensee's daycare was closed down for the suspension, her daycare parents were confused and disappointed.^[28] Two families and one child drafted letters on behalf of Licensee, attesting to her kind and cooperative nature and wonderful care. Each of the two families acknowledged the seriousness of the incident on February 12, 2004, but both thought the sanction of temporary immediate suspension was too severe and had no hesitation about leaving their children in Licensee's care.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50, 245A.07 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. “‘Supervision’ means a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school age child, it means a caregiver being available for assistance and care so that the child’s health and safety is protected.”^[29]

4. A licensed provider must be the primary provider of care in the residence, and children in a daycare must be supervised by a caregiver.^[30]

5. Pursuant to Minn. Stat. § 245A.07, subd. 2, “[i]f the license holder’s actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.” The companion rule, Minn. R. 9502.0341, subp. 9, requires the Commissioner to immediately suspend a license if the Commissioner finds that the health, safety, or rights of the children in care are in imminent danger.

6. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the Commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule.^[31]

7. The Administrative Law Judge is limited to the determination of “whether the temporary immediate suspension should remain in effect pending the commissioner’s final order under section 245A.08.”^[32]

8. The Department must demonstrate that “reasonable cause exists to believe that the license holder’s actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.”^[33]

9. The Department demonstrated reasonable cause for the temporary immediate suspension. The suspension should remain in effect pending a final order because there is a risk of imminent harm to the health or safety of children served by Licensee.

10. The attached Memorandum is incorporated by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the temporary immediate suspension of Sara Wevley's Family Child Care license be affirmed.

Dated: April 29, 2004

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape recorded (3 tapes). No transcript prepared.

MEMORANDUM

The Department has the burden of showing that there is reasonable cause to believe that the health, safety, or rights of the children in care are in imminent danger. Requiring only a showing of "reasonable cause" is intended to ensure that vulnerable children are protected until there can be a full hearing and a final determination.

The County, on behalf of the Department, must present reliable oral testimony or reliable documentary evidence in support of a finding of reasonable cause. Reasonable cause to suspend a license is not specifically defined in the statute, but it is analogous to the probable cause standard in a criminal proceeding.^[34] Probable cause is defined as "a reasonable ground in fact and circumstance for a belief in the existence of certain circumstances."^[35] There is an adequate showing of reasonable cause unless the evidence offered by the Licensee makes "inherently incredible" facts which appear in the record and which are necessary to establish elements of the licensing violation. In such cases the State is entitled to rely on hearsay evidence linking the license holder to an act that puts children in care at risk of imminent harm.

"Imminent harm" is also not defined in the statute, but the Department has defined "imminent danger" to mean that a child is threatened with immediate or present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.^[36] While this definition of imminent danger is not binding, it is instructive. At a minimum, "imminent harm" means harm that is impending or about to occur.^[37]

When Licensee called her daughter away from the kitchen and downstairs to help clean up the broken light fixture, she left the two school age children unsupervised in violation of Minn. R. parts 9502.0315, subp. 29a and 9502.0365, subp. 5. Licensee admits that she and Brittany were downstairs cleaning up the glass for at least ten minutes. She did not instruct Brittany to bring the children inside before coming downstairs to help clean up or take any other steps to protect them. This lapse in judgment allowed the children to walk away from the yard and travel about 2400 feet

before being found. That would have taken a four and five year old at least 30 minutes, and Ms. Monk's estimate of 45 minutes is very likely correct. Perhaps they wandered off even before Licensee went downstairs at about 1:15 p.m. and had been gone for 15-25 minutes before she thought to check on them. At any rate, during the 30-45 minutes that they were gone, the children were at risk of being injured or harmed on the playground, around the school, and while crossing the highway. Thus, reasonable cause exists to believe that Licensee's violations of the supervision rules pose an immediate risk of harm to the health, safety and rights of the children served by her daycare.

GCSS's investigation into the matter in the days immediately following the incident lacked thoroughness in Licensee's view, but it accurately determined the essential facts. The facts presented by both GCSS and Licensee demonstrate Licensee's lapse in supervision.

S.M.M.

^[1] Testimony of Licensee.

^[2] Ex. 5. Distances are measured on this exhibit.

^[3] Testimony of Licensee. The other 4-year-old child was at preschool that afternoon and not in attendance at the daycare.

^[4] The children's ages were 3 ½, 2 ½, 1 ½, and 8 months.

^[5] Licensee had sleeping arrangements for these children on the main floor and the lower level.

^[6] Testimony of Licensee.

^[7] Ex. 5.

^[8] Testimony of Licensee; Ex. 1.

^[9] Ex. 1.

^[10] Monday, February 16, 2004, was a state holiday.

^[11] Exs. 8, 8-A.

^[12] Ex. 7.

^[13] Ex. 24.

^[14] Ex. 4.

^[15] Ex. 6.

- [\[16\]](#) Ex. 10.
- [\[17\]](#) Ex. 11.
- [\[18\]](#) Ex. 12.
- [\[19\]](#) Ex. 13.
- [\[20\]](#) Ex. 14.
- [\[21\]](#) Ex. 15.
- [\[22\]](#) Exs. 17, 17-A.
- [\[23\]](#) Ex. 16.
- [\[24\]](#) Ex. 18.
- [\[25\]](#) Ex. 19.
- [\[26\]](#) Testimony of Christine Monk. Ex. 21.
- [\[27\]](#) Ex. 25.
- [\[28\]](#) Ex. 26.
- [\[29\]](#) Minn. R. 9502.0315, subp. 29a.
- [\[30\]](#) Minn. R. 9502.0365, subp. 5.
- [\[31\]](#) Minn. Stat. § 245A.08, subd. 3.
- [\[32\]](#) Minn. Stat. § 245A.07, subd. 2a.
- [\[33\]](#) Minn. Stat. § 245A.07, subd. 2a.
- [\[34\]](#) See *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892, 902 (1976); *State v. Harris*, 265 Minn. 260, 121 N.W.2d 327 (1963).
- [\[35\]](#) See *Merriam-Webster's Dictionary of Law* (1996). "Probable cause is an objective standard rather than a function of subjective opinion or suspicion not grounded in fact or circumstance." *Id.* at Note. See also *Black's Law Dictionary* (6th edition).
- [\[36\]](#) Minn. R. 9543.1010, subp. 8.
- [\[37\]](#) See *American Heritage College Dictionary* (3rd edition).